

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A Limited Liability Partnership

2 Including Professional Corporations

NEIL A.F. POPOVIC, Cal. Bar No. 132403

3 ANNA S. McLEAN, Cal. Bar No. 142233

TENAYA RODEWALD, Cal. Bar No. 248563

4 MUKUND H. SHARMA, Cal. Bar No. 249125

LIEN H. PAYNE, Cal. Bar No. 291569

5 JOY O. SIU, Cal. Bar No. 307610

Four Embarcadero Center, 17th Floor

6 San Francisco, California 94111-4109

Telephone: 415.434.9100

7 Facsimile: 415.434.3947

Email: npopovic@sheppardmullin.com

8 amclean@sheppardmullin.com

msharma@sheppardmullin.com

9 rodewald@sheppardmullin.com

lpayne@sheppardmullin.com

10 jsiu@sheppardmullin.com

11 Attorneys for Defendant,

SEAGATE TECHNOLOGY LLC

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16 IN RE SEAGATE TECHNOLOGY LLC
LITIGATION

18 CONSOLIDATED ACTION

Case No. 3:16-cv-00523-JCS

**[PROPOSED] ORDER GRANTING
SEAGATE'S MOTION TO STRIKE AND
FOR JUDGMENT ON THE PLEADINGS**

Date: July 7, 2017

Time: 9:30 a.m.

Place: Courtroom G

Judge: Hon. Joseph C. Spero

Second Consolidated Amended Complaint
filed: July 11, 2016

1 Having considered defendant Seagate Technology LLC's ("Seagate's") Motion to Strike
 2 and for Judgment on the Pleadings ("Motion") with regard to Plaintiffs' Second Consolidated
 3 Amended Complaint ("SCAC") pursuant to Fed. R. Civ. P. 12(c) and Fed. R. Civ. P. 12(f), as well
 4 as the opposition filed by Plaintiffs, Seagate's reply papers and the arguments of counsel, and
 5 good cause appearing, the Court hereby GRANTS Seagate's motion as follows:

6
 7 a. The allegations and claims previously dismissed by the Court are hereby
 8 STRICKEN, including:

- 9 (1) the Fourth and Sixth Causes of Action for express warranty;
- 10 (2) the Fifth and Seventh Causes of Action to the extent they allege a breach of
- 11 California Commercial Code section 2314;
- 12 (3) all allegations of misrepresentations or omissions except those related to
- 13 RAID or AFR.

14 The allegations and claims that are hereby stricken are reflected in red, strikethrough text
 15 in Exhibit 1 to Seagate's Motion.

16
 17 b. Judgment on the Pleadings in favor of Seagate is GRANTED on the Ninth,
 18 Fourteenth, and Fifteenth Causes of Action because they depend entirely on factual
 19 allegations that were previously dismissed. Nor may class allegations be
 20 maintained under any of these claims. Because it would be futile to grant further
 21 leave to amend, the Ninth, Fourteenth, and Fifteenth Causes of Action are hereby
 22 DISMISSED with prejudice.

23
 24 c. Judgment on the Pleadings in favor of Seagate is GRANTED on the implied
 25 warranty claims in the Fifth and Seventh Causes of Action. Nor may class
 26 allegations be maintained under any of these claims. Because it would be futile to
 27 grant further leave to amend, the Fifth and Seventh Causes of Action are
 28 DISMISSED with prejudice.

1 d. Plaintiffs' nationwide class allegations are STRICKEN with prejudice. Under
2 *Mazza v. American Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012), each
3 class member's consumer protection claims should be governed by the consumer
4 protection laws of the jurisdiction in which the transaction took place. The same is
5 true of the unjust enrichment claim, which is derivative of the others.

6
7 The allegations and causes of action that are dismissed and stricken under items b-d are
8 reflected in blue, strikethrough text in Exhibit 1 to Seagate's Motion. Plaintiffs are ordered
9 to file a Third Amended Complaint consistent with this order by _____.

10
11 IT IS SO ORDERED.

12
13 DATED: _____, 2017

14
15 _____
16 The Honorable Joseph C. Spero
17 United States Magistrate Judge
18
19
20
21
22
23
24
25
26
27
28